

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 620

AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-14-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A variance from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System (**NPDES**) permit issued under this title must meet the conditions specified in:

- (1) 40 CFR Part 132, Appendix F, Procedure 2.C; and
- (2) rules adopted by the board.

(b) Except as provided in subsection (c), a variance from a water quality standard of the water pollution control board under section 8 of this chapter or IC 13-7-7-6 (before its repeal) may be:

- (1) granted for not more than five (5) years; and
- (2) renewed for not more than five (5) years.

(b) A variance application must contain a pollutant minimization plan specific to the pollutant for which the variance is requested. With respect to a variance relating to an NPDES permit for a combined sewer overflow discharge, this subsection is satisfied if the NPDES permit holder has prepared a long term control plan and is implementing the nine (9) minimum controls pursuant to:

- (1) 33 U.S.C. 1342(q); and
- (2) 59 FR 18688.

(c) A variance granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part

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the basis of a National Pollutant Discharge Elimination System permit
 (1) issued under this title; and
 (2) extended under IC 13-15-3-6 or IC 13-7-10-2(e) (before its
 repeal);
 remains in effect until the National Pollutant Discharge Elimination
 System permit expires.

(c) Subject to subsection (d), a variance described in subsection
 (a) may be granted for a period not to exceed the term of the
 NPDES permit affected by the variance.

(d) If an NPDES permit remains in effect beyond its stated term
 under IC 13-15-3-6, a variance described in subsection (a) remains
 in effect for as long as the NPDES permit requirements affected by
 the variance are in effect.

(e) A variance described in subsection (a) may be renewed each
 time the NPDES permit affected by the variance is renewed if the
 conditions of subsections (a) and (b) continue to be met.

SECTION 2. IC 13-18-3-2.3 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.3. (a) A long term
 control plan, upon implementation, fulfills the water quality goals of
 the state with respect to wet weather discharges that are a result of
 overflows from the combined sewer system addressed by the plan if:

- (1) the plan provides for the implementation of cost effective
 control alternatives that will attain water quality standards or
 maximize the extent to which water quality standards will be
 attained if they are not otherwise attainable;
- (2) the plan provides, at a minimum, for the capture for treatment
 of first flush;
- (3) the plan is reviewed periodically; and
- (4) additional controls are implemented as provided in section 2.4
 of this chapter.

Cost effectiveness may be determined, at the option of the permit
 holder, by using a knee of the curve analysis.

~~(b)~~ (a) **When This subsection applies** if a use attainability analysis
 is required for a suspension of designated uses under this chapter, the
 department must, to the maximum extent permitted under state or
 federal law: **performed and approved to change the designated use**
of a water body receiving wet weather discharges from combined
sewer overflows from the recreational use designation that applied
to the waters immediately before the application to the waters of
the CSO wet weather subcategory established in section 2.5 of this
chapter to that subcategory. Upon implementation of the approved
long term control plan, the plan fulfills the water quality goals of

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the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan.

(b) A long term control plan must meet the requirements of:

- (1) Section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q)); and
- (2) 59 FR 18688.

(c) An approved long term control plan shall be incorporated into:

- (1) the NPDES permit holder's NPDES permit; or
- (2) an order of the commissioner under IC 13-14-2-6.

(d) If a use attainability analysis is performed, the department shall:

- (1) review a use attainability analysis submitted under this chapter concurrently with a long term control plan submitted under this chapter; and
- (2) use the approved long term control plan to satisfy the requirements of the use attainability analysis.

SECTION 3. IC 13-18-3-2.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.4. ~~A~~ **An NPDES** permit holder shall review the feasibility of implementing additional or new control alternatives to attain water quality standards. ~~including standards suspended under section 2-5 of this chapter.~~ The NPDES permit holder shall conduct such a review periodically, but not less than every five (5) years after approval of the long term control plan by the department. The **NPDES** permit holder shall:

- (1) document to the department that the long term control plan has been reviewed;
- (2) update the long term control plan as necessary;
- (3) submit any amendments to the long term control plan to the department for approval; and
- (4) implement control alternatives determined to be cost effective **and affordable.**

Cost effectiveness may be determined, at the option of the NPDES permit holder, by using a knee of the curve analysis **in accordance with section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q)) and 59 FR 18688.**

SECTION 4. IC 13-18-3-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. (a) ~~Subject to the limitations of subsection (d); designated uses and associated water quality criteria are temporarily suspended on a site specific basis;~~ **A CSO wet weather limited use subcategory is established** for waters affected by discharges from receiving combined sewer overflow points

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listed in the National Pollutant Discharge Elimination System (NPDES) permit due to overflows, as specified in an approved long term control plan. The CSO wet weather events, if: limited use subcategory applies to a specific water body after implementation of an approved long term control plan for the combined sewer system whose overflow discharges affect those waters is implemented and the conditions of subsection (b) are satisfied. The following requirements apply to the CSO wet weather limited use subcategory:

- (1) the department has approved a long term control plan for the NPDES permit holder for the combined sewer system;
- (2) the approved long term control plan is incorporated into the permit holder's NPDES permit;
- (3) the approved long term control plan:
 - (A) satisfies the requirements of section 2.3 of this chapter; and
 - (B) specifies the designated uses and water quality standards to be suspended under this section;
- (4) the permit holder:
 - (A) has implemented the approved long term control plan; or
 - (B) is implementing the approved long term control plan in accordance with the schedule approved in the long term control plan;
- (5) the permit holder is in compliance with the requirements for the operation and maintenance of its wastewater treatment facilities and combined sewer system, including its combined sewer operational plan approved by the department; and
- (6) the provisions of 40 CFR 131.10, 40 CFR 131.20, and 40 CFR 131.21 are satisfied.

The provisions of 40 CFR 131.10 may be satisfied by including appropriate data and information in the long term control plan.

(b) Existing uses as defined in 40 CFR 131.3(e) and associated water quality criteria may be suspended only in accordance with federal law.

(c) To the extent permitted under federal law, the department shall provide a compliance schedule for attainment of water quality based limitations for discharges from combined sewer overflow points in the NPDES permit during the period when the long term control plan is being developed.

(d) A temporary suspension applies only:

- (1) to the NPDES permit holder for discharges from the permit holder's listed combined sewer overflow points; and

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(2) (1) The water quality based requirements associated with the CSO wet weather limited use subcategory that apply to waters affected by wet weather combined sewer overflows are determined by an approved long term control plan for the combined sewer system. The water quality based requirements remain in effect during the time and to the physical extent that the designated uses and water quality standards are not attained due to the discharges from the listed combined sewer overflow points; recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained, but not for not more than four (4) days after the date the overflow discharge ends.

(c) The board may adopt rules in accordance with IC 13-14-8 and IC 13-14-9 to amend the water quality standards to include the terms of the temporary suspension allowed by this section:

(2) At all times other than those described in subdivision (1), the water quality criteria associated with the appropriate recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory apply unless there is a change in the use designation as a result of a use attainability analysis.

(b) The CSO wet weather limited use subcategory applies if:

(1) the department has approved a long term control plan for the NPDES permit holder for the combined sewer system;

(2) the approved long term control plan:

(A) is incorporated into:

(i) the NPDES permit holder's NPDES permit; or

(ii) an order of the commissioner under IC 13-14-2-6;

(B) satisfies the requirements of section 2.3 of this chapter; and

(C) specifies the water quality based requirements that apply to combined sewer overflows during and immediately following wet weather events, as provided in subsection (a)(1);

(3) the NPDES permit holder has implemented the approved long term control plan; and

(4) subject to subsection (c), 40 CFR 131.10, 40 CFR 131.20, and 40 CFR 131.21 are satisfied.

(c) For purposes of subsection (b)(4), 40 CFR 131.10 may be satisfied by including appropriate data and information in the long

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term control plan.

(d) The department shall implement the CSO wet weather limited use subcategory and associated water quality based requirements under this section when the subcategory and requirements are approved by the United States Environmental Protection Agency. The department shall seek approval of the United States Environmental Protection Agency in a timely manner.

(ff) (e) The NPDES permit holder shall monitor its discharges and the water quality in the affected receiving stream periodically ~~but at least every three (3) years~~ as provided in the long term control plan. The NPDES permit holder shall provide all such information to the department.

(gg) (f) In conjunction with a review of its long term control plan under section 2.4 of this chapter, the NPDES permit holder shall review information generated after the use attainability analysis was approved by the department to determine whether the conclusion of the use attainability analysis is still valid. The NPDES permit holder shall provide the results of the review to the department.

(hh) A temporary suspension under this section may be authorized only to the extent allowed under federal law. If the department determines that information provided under this section demonstrates that uses being suspended are attainable, the department shall promptly notify the permit holder of its determination. A permit holder may appeal the department's determination under this section in accordance with IC 4-21.5.

(ii) After the effective date of the determination under subsection (h), the long term control plan may be modified to achieve attainment of the previously suspended uses and associated water quality criteria. The compliance schedule and other provisions of the NPDES permit shall also be modified as necessary.

(g) The board shall adopt rules under IC 13-14-8 and IC 13-14-9 to implement this section before October 1, 2006.

SECTION 5. IC 13-18-3-2.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.6. (a) Where appropriate, permits shall contain schedules of compliance requiring the permittee to take specific steps to achieve expeditious compliance with applicable standards, limitations, and other requirements.

(b) The schedule of compliance shall require compliance as soon as reasonably possible, but may remain in effect as long as the National Pollutant Discharge Elimination System (NPDES) permit

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requirements are in effect.

(c) The department shall, at the request of the NPDES permit holder, incorporate in the permit a schedule of compliance for meeting the water quality based requirements associated with combined sewer overflows during the period of development, approval, and implementation of the long term control plan. The schedules of compliance:

- (1) may exceed time frames authorized under 327 IAC; and
- (2) may not exceed the period specified for implementation in an approved long term control plan.

(d) If the term of a schedule of compliance exceeds the term of an NPDES permit, the department shall continue to implement the schedule of compliance continuously before and during each successive permit term, to the maximum duration as provided in subsection (c). The permit shall specify that the schedule of compliance lasts beyond the term of the permit.

(e) Upon request of the permittee, the department shall modify NPDES permits containing water quality based requirements associated with combined sewer overflows to provide schedules of compliance as provided in subsection (c).

(f) The board shall adopt rules under IC 13-14-8 and IC 13-14-9 to implement this section before October 1, 2006.

SECTION 6. [EFFECTIVE UPON PASSAGE] (a) Before September 1, 2005, the department of environmental management shall review and revise the guidance developed for combined sewer overflow communities to incorporate and reflect the law as in effect on July 1, 2005.

(b) This SECTION expires September 1, 2005.

SECTION 7. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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